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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/393,677	09/10/1999	TETSURO MOTOYAMA	5244-0099-2X	3114

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EXAMINER	
TRAN, MYLINH T	

ART UNIT	PAPER NUMBER
2179	

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/393,677	MOTOYAMA ET AL.	
	Examiner	Art Unit	
	Mylinh Tran	2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-9,13-17,21-25 and 29-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5-9,13-17,21-25 and 29-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *05/01/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Applicant's Amendment filed 04/13/06 has been entered and carefully considered. Claims 1, 9, 17, 25 have been amended. Claims 2-4, 10-12, 18-20 and 26-28 have been cancelled. The arguments are persuasive. However, the limitation of the amended claims have not been found to be patentable over newly discovered prior art, therefore, claims 1, 5-9, 13-17, 21-25 and 29-32 are rejected under the new ground of rejection as set forth below.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 5-9, 13-17, 21-25 and 29-32 of instant Application No. 09/393,677 (hereafter `677) are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-9, 11-17, 19-25 and 27-32 of copending Application No. 09/440,692 (hereafter `692). Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application claims system, method, and software product for monitoring data of selecting of the plurality of operations of the interface and to generate/transfer a log of the monitored data in a form of an abstract class is obvious variation of generating/transferring the monitored data by encoding/decoding into/from the log file.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Claims 1, 5-9, 13-17, 21-25 and 29-32 of instant Application No. 09/393,677 (hereafter `677) are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5-8, 12-15, 19-22 and 26-28 of copending Application No. 09/311,148 (hereafter `148). Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application claims system, method, and software product for monitoring data of selecting of the plurality of operations of the interface and to generate/transfer a log of the monitored data in a form of an abstract class is obvious variation of generating/transferring the monitored data by encoding/decoding into/from the log file.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 5-9, 13-17, 21-25 and 29-32 are rejected under 35 U.S.C. 103(x) as being unpatentable over Boulton et al. [US. 5,566,291] in view of Varga et al. [US. 6,181,981].

As per claims 1, 9, 17, 25, Boulton teaches a computer implemented method and corresponding system for monitoring usage of an interface of a device comprising the steps/means: A device comprising an interface, the interface

comprising a plurality of operations to be selected by a user (column 3, lines 60-67); a monitoring unit configured to monitor data of selecting of the plurality of operations of the interface by the user (column 4, lines 15-30), and to generate the monitored data (see abstract), the monitored data being stored in the device (column 5, lines 36-44); a communicating unit configured to receive an object derived from the abstract class including the monitored data (column 9, lines 160 and column 10, lines 3-20, 35-47). Boulton fails to clearly teach the step of automatically start the monitoring without requiring a connection to a receiving device to which the log of monitored data is to be sent, and the step of automatically starting the monitoring without requiring a connection to a receiving device to which the log of monitored data is to be sent. However, Varga teaches the step of automatically starting the monitoring without requiring a connection to a receiving device to which the log of monitored data is to be sent (e.g., col. 2, line 65 - col. 3, line 13; *self-monitoring vending machine);* the monitored data being in a form of an abstract class (e.g., col. 6, lines 8-20; *the standard reporting format data is* a form of an abstract class); and to automatically communicate the monitored data by a unidirectional communication without requiring input from the device to which the monitored data is to be sent (e.g., col. 2, line 65 - col. 3, line 13; *self-monitoring vending machine).* It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine the Varga's teachings with the Boulton's system. Motivation of the combination would have been to make it

easy for the user by not requiring him/her to directly execute a specific monitoring program.

As per claims 5, 13, 21, and 29, Boulton teaches the communicating unit sends the log of the monitored data when the user exits the device (column 12, lines 47-56).

As per claims 6, 7, 14, 15, 22, 23, 30 and 31, Boulton teaches a setting unit configured to set a number of sessions of the device to be executed by the user prior to the communicating unit communicating the log of the monitor data, wherein the abstract class includes first and second derived classes, the first derived class storing data of one session and the second derived class storing data of the set number of sessions (column 3, lines 18-32).

As per claim 8, 16, 24, and 32, Boulton discloses the communicating unit communicated the log of the monitored data by Internet mail (column 39, lines 50-65).

Response to Arguments

Applicant's arguments with respect to claims 1, 5-9, 13-17, 21-25 and 29-32 have been considered but are moot in view of the new ground(s) of rejection.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mylinh Tran. The examiner can normally be reached on Mon - Thu from 7:OOAM to 3:OOPM at 571-272-4141.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo, can be reached at 571-272-4847.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mylinh Tran

Art Unit 2179

BA HUYNH
PRIMARY EXAMINER